IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 33380 of 2005(W)

OP.1234/2005 of FAMILY COURT,ERNAKULAM
.....

PETITIONER:

BHARAT KUMAR, S/O.KANJI RATHENSEY,
40/643, SOUTH TOWER, AC JOSE LANE,
ERNAKULAM-682 030.

BY ADV. SRI.R.MANOJ
SMT.SINDHU MANOJ

RESPONDENTS:
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1. SELMA MINI, THURAPPAN PARAMBIL,
ELAMAKKARA P.O., ERNAKULAM DISTRICT.

2. SABU THOMAS,
CHAKKALAKKAL, NANTHYATTUKUNNAM,
N.PARAVOOR.

BY ADV. SRI.SUBAL J.PAUL
SRI.P.M.ZIRAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)No.33380/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. TRUE COPY OF THE O.P.1234/05 ON THE FILES OF THE FAMILY COURT, ERNAKULAM DATED 29-10-2005.

EXT.P2. TRUE COPY OF O.P.192/03 ON THE FILES OF THE FAMILY COURT, ERNAKULAM DATED 24-2-2003.

EXT.P3. TRUE COPY OF THE AMENDED COUNTER AFFIDAVIT FILED BY THE PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM IN O.P.192/03.

EXT.P4. TRUE COPY OF THE COUNTER FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P5. TRUE COPY OF THE COMPLAINT FILED BY THE FIRST RESPONDENT BEFORE THE C.I. OF POLICE, WOKEN'S POLICE STATION, ERNAKULAM DATED 6-2-2004.

/ TRUE COPY /

KURIAN JOSEPH & K.PADMANABHAN NAIR, JJ.

W.P(C)No.33380 of 2005

Dated this the 22nd day of January, 2007

JUDGMENT

Kurian Joseph,J.

Whether paternity of a child is an issue to be considered by the Family Court under Section 7(1)(e) of the Family Court Act, 1984, without a matrimonial cause, is the question to be considered in this case.

2. The first respondent before the Family Court, Ernakulam, in O.P.No.1234/2005 is the petitioner herein. The relief claimed by the first respondent herein before the Family Court reads as follows:-

> "Therefore, it is humbly prayed that this Hon'ble Court be pleased to declare that Bharat Kumar K.Palicha (the 1st respondent) is the father of Bhagat Kumar B., aged 3 years (2nd petitioner) delivered by Selma Mini (1st petitioner) on 9th day of August 2002 at Lakshmi Hospital, Dewans Road, Ernakulam."

The second respondent is the husband of the first respondent at the relevant time. According to the first respondent she had developed extra marital relationship with the petitioner and that the child Bhagat Kumar is born in that relationship. Hence the petition for declaration

that the petitioner herein is the father of the said child. The contention of the petitioner is that such a petition for deciding the paternity of a person is not maintainable before the Family Court, without a matrimonial cause.

3. The Family Courts Act, 1984 has been enacted mainly for settlement of "disputes relating to marriage and family affairs and for matters connected therewith". Section 3 deals with establishment of Family Courts for exercising the jurisdiction and powers conferred on the courts under the Act. Section 7 deals with jurisdiction which reads as follows:-

> "7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall --
>
> (a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
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> (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation. -- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court also have and exercise --

(a) the jurisdiction exercised by a Magistrate of

> the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
>
> (b) such other jurisdiction as may be conferred on it by any other enactment."

We are concerned with explanation (e) of Section 7(1) - for declaration as to the legitimacy of any person.

4. The jurisdiction conferred on the Family Court is settlement of issues arising out of matrimonial causes. Matrimonial cause is a cause relating to rights of marriage between husband and wife. Paternity and legitimacy are two different concepts. Paternity by itself may not, in all circumstances, be a matrimonial cause, as in the instant case. Paternity is the state or fact of being the father of a particular child. Legitimacy of a child is its right to be officially accepted as such. Admittedly the petitioner is not the husband of the first respondent. According to the 1st respondent, she had only extra marital relationship with the petitioner. The second respondent herein is the husband. He did not have a case regarding legitimacy of the child. The Family Court gets jurisdiction to go into the question of legitimacy of any

person only if such a question arises in a matrimonial cause. An investigation on the paternity of a person is required only when the question of legitimacy of the person is to be decided by the Family Court. That question arises only out of a matrimonial cause where there is a claim on matrimonial relationship out of which the said person is born. It may also arise in situations covered by explanation (g) to Section 7(1), in the case of guardianship, as held by the Supreme Court in Renubala Moharana v. Mina Mohanty, (2004) 4 SCC 215 (2004 (2) KLT SN 38 (SC)). It was also held by the Supreme Court in the said decision that the Family Court cannot entertain any proceedings for declaration as to the legitimacy of any person without any claim on marital relationship. In the case before us the petitioner before the Family Court, the first respondent herein, does not have a case of marital relationship with the petitioner herein. The case admittedly is of extra marital relationship. The dispute is with regard to the paternity of a child born in the said extra marital relationship. That is not a matter falling within the jurisdiction of the Family Court. Paternity of a child can be gone into as incidental to a dispute on the

legitimacy arising only out of a claim on marital relationship between the parties. Such a question also may incidentally arise in deciding a guardianship petition. No such situation arises in this case.

Therefore, we allow the writ petition. O.P.No.1234/2005 on the file of the Family Court, Ernakulam is struck off. However, we make it clear that the judgment will not stand in the way of the respondents approaching the civil court for the declaration on paternity.

(KURIAN JOSEPH, JUDGE)

(K.PADMANABHAN NAIR, JUDGE)

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